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May 15, 2020

Via ECF

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

I write on behalf of the Kingdom of Saudi Arabia (“Saudi Arabia”) concerning an issue raised by the Plaintiffs’ Executive Committees (“Plaintiffs”) in the attempted videoconference hearing yesterday. During that hearing, counsel for Plaintiffs asserted that Saudi Arabia had not met its burden to show that the 11 individuals for whom it seeks immunity from testimony were formally accredited by the U.S. Department of State as diplomatic or consular officials.

We have generally understood Plaintiffs to be challenging primarily whether certain *other* individuals performed diplomatic or consular functions. As the Court noted at the outset, Saudi Arabia requested from the United States diplomatic credentials for some employees of the Ministry of Islamic Affairs, such as Fahad Al Thumairy and Mohammed Al Muhanna, even though they were serving in roles such as imams at the King Fahad Mosque rather than working at Saudi Arabia’s Embassy or its Los Angeles Consulate. The United States ultimately revoked their diplomatic credentials for that reason.

But as set forth in Appendix A to our opening memorandum seeking a protective order, none of those individuals is among the 11 diplomats and consular officials for whom Saudi Arabia seeks immunity from testimony. As set forth in our reply (at 3), we did not previously believe there to be a genuine factual dispute about the accreditation of those 11 individuals; on pages 1-3 of the version of their witness list filed under seal on December 6, 2019, Plaintiffs themselves listed almost all of those individuals by their diplomatic or consular titles and positions at either the Embassy or the Consulate.

We now understand Plaintiffs to be contending, at least in part, that Saudi Arabia must point to a statement *by the State Department* to support any assertion of diplomatic or consular immunity. Although we do not agree with that contention as a matter of law, we submit that the

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Court can efficiently resolve any factual dispute by referring to archived versions of the *Diplomatic List* and the *List of Foreign Consular Offices*, both maintained by the State Department on publicly available web sites.

The *Diplomatic List* contains “names of members of the diplomatic staffs of all missions and their spouses” who, with exceptions not relevant here, “enjoy full immunity under provisions of the Vienna Convention on Diplomatic Relations.”¹ As of “Summer 2000,” the *Diplomatic List* contained entries for the following individuals: “His Royal Highness Prince Bandar Bin Sultan”; “Ahmed A. Kattan” (spelled “Qattan” in the motion papers); “Majed H. N. Al-Ghesheyan”; and “Mazyed I. Al Mazyed.”² The same names also appear on older versions of the list going back to 1997³ and on newer versions as late as 2002.⁴

The *List of Foreign Consular Offices* contains “a complete and official listing of the foreign consular offices in the United States, and recognized consular officers,” who, with exceptions not relevant here, “are entitled to the limited immunities described in the Vienna Convention on Consular Relations.”⁵ As of “Fall/Winter 1999,” the *List of Foreign Consular Offices* contained entries for the following individuals: “Mohammed A. Al Salloum”; “Abdullah S. Al Awwad” (spelled “Awad” in the motion papers); “Sami Abdullah Ibrahim”; and “Saad Hamed Al Jebreen” (spelled “Al Jabreen” in the motion papers), and gives “Date[s] of Recognition” for those individuals ranging from 1995 to 1998.⁶ In addition, a later version of the *List of Foreign Consular Offices* lists “Waleeda Bukhari,” which appears to be a typo for “Waleed A. Bukhari,” with a “Date of Recognition” of “Feb 11, 2002.”⁷

Those listings identify all individuals as to whom Saudi Arabia has asserted Vienna Conventions testimonial immunity, as shown in Appendix A in support of its motion, except for

¹ U.S. Dep’t of State, Index: Diplomatic List, https://1997-2001.state.gov/about_state/contacts/diplist/index.html.

² U.S. Dep’t of State, Diplomatic List, Summer 2000, https://1997-2001.state.gov/about_state/contacts/diplist/2000/00summer_4.html#saudi (capitalization omitted).

³ U.S. Dep’t of State, Diplomatic List, Fall 1997, https://1997-2001.state.gov/about_state/contacts/diplist/1997/fall_1.html.

⁴ U.S. Dep’t of State, Historical Diplomatic List, 2002 Winter/Spring, <https://2009-2017.state.gov/s/cpr/rls/dpl/2002/11819.htm>.

⁵ U.S. Dep’t of State, Foreign Consular Offices in the United States, Fall/Winter 1999, Preface, https://1997-2001.state.gov/travel/consular_offices/preface.html.

⁶ U.S. Dep’t of State, Foreign Consular Offices in the United States, Fall/Winter 1999, https://1997-2001.state.gov/travel/consular_offices/s_sec.html (capitalization omitted).

⁷ U.S. Dep’t of State, Foreign Consular Offices in the United States, Fall/Winter 2003, <https://2009-2017.state.gov/s/cpr/fco/21629.htm> (capitalization omitted).

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Ambassador Abdurrahman Bin Gurman Al Shahri and Ambassador Mohammed Bin Faiz Al Sharif. Those individuals, both of whom are now former employees, served as Ambassadors not to the United States, but to other jurisdictions. Saudi Arabia maintains that such service is relevant under both the Vienna Conventions and the high-ranking-official doctrine, even though Al Shahri and Al Sharif did not receive accreditation from the State Department. In addition, Waleed Bukhari, who is no longer in the consular post listed above, is Saudi Arabia's current Ambassador to Lebanon.

Respectfully submitted,

/s/ Michael K. Kellogg

Michael K. Kellogg
Counsel for the Kingdom of Saudi Arabia

cc: The Honorable George B. Daniels (via facsimile)
All MDL Counsel of Record (via ECF)